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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/822,504

04/12/2004

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07/12/2007

EXAMINER

MORGAN JR, JACK HOSMER

ART UNIT

PAPER NUMBER

3782

MAIL DATE

DELIVERY MODE

07/12/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/822,504

Applicant(s)

BROOKS, JEFFREY S.

Examiner

Jack H. Morgan

Art Unit

3782

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 April 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 02 April 2007 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☒ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Art Unit: 3782

DETAILED ACTION

Oath/Declaration

1. The oath or declaration is defective. A new oath or declaration in compliance with 37 CFR 1.67(a) identifying this application by application number and filing date is required. See MPEP §§ 602.01 and 602.02.

The oath or declaration is defective because:

It does not state that the person making the oath or declaration acknowledges the duty to disclose to the Office all information known to the person to be material to patentability as defined in 37 CFR 1.56.

Instead applicant improperly cites 37 CFR 1.56(a) and uses the language "material to the patentability and the examination".

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1, 2, 5-10, 13-16, 17 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Clarke (US 5,967,393) in view of Distefano et al. (US 5,829,502). Clarke discloses a concealed holster (Fig 1-3) which mounts on the belt of a user and comprises a holster pocket (Fig 2 and 3, 290), a grip receiver (100) with a grip receiver

face and face inlay (190, Col 3, lines 48-50) for removably receiving and concealing the grip and action of the pistol and an auxiliary case (192, Col 3 lines 53-56).

In regards to claim 10, Clarke further discloses a resilient grip receiver face formed from plastic (Col 4, lines 1-4).

Clarke does not disclose a flap on the auxiliary case for accessing the interior of the auxiliary case and further, the auxiliary case having a resilient case bottom extending perpendicular to the plane of the holster pocket and carried by the holster pocket and the holster pocket pivoting at the case bottom along a hinge line. Clarke discloses the auxiliary case being a pocket, which are well known in the art to have bottoms. Distenfino et al. disclose a bag (Fig 2) with a zipper closure (25) having auxiliary cases (Fig 3, 16) with flaps (18) to retain a small item placed therein (Col 4, lines 51-54), and further disclosing the auxiliary cases having resilient bottoms perpendicular to the plane of the larger pocket which is known to create a larger pocket for holding items. Therefore it would have been obvious to one of ordinary skill in the art at the time the invention was made to create the concealed holster of Clarke as modified above with the flaps of Distenfino et al. in order to retain the items placed in the auxiliary case and the auxiliary case with the bottom of Distenfino et al. in order to create a larger interior for holding the items placed in the case.

Clarke does not disclose the holster pocket pivoting at the resilient auxiliary case bottom, however, as Distenfino et al. disclose pockets which do not run the length of the larger receptacle, and a zipper would create a hinge line at every point along its length as the zipper is opened, and further that any solid items (such as a portable

Art Unit: 3782

electronic device) in the auxiliary case of Clarke would cause the hinging to occur at the bottom of said case if the bottom is above the ends of the zipper. It would be obvious to one of ordinary skill in the art at the time of invention that the holster pocket of Clarke would pivot at the resilient case bottom if modified as taught by Distenfino et al. with an auxiliary case bottom above the ends of the zipper.

3. Claims 3, 4, 11, 12, 19 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Clarke (US 5,967,393) in view of Distefano et al. (US 5,829,502) as applied to claims 1, 2, 5-10, 13-16, 17 and 18 above and further in view of Tuber (US 5,312,029). Clarke as modified above discloses all the limitations of the claims except for a clip attached to said holster pocket and belt to removably secure the holster to the user. Tuber discloses a belt clip for a container (Fig 3) in which the container is attached to the belt using a clip (30,32 and 34, Col 1, lines 57-62) in order to secure the container to the user. Therefore it would have been obvious to one of ordinary skill in the art at the time the invention was made to create the concealed holster of Clarke as modified above with the belt clip of Tuber in order to removably attach the holster to the belt of a user.

Response to Arguments

4. Applicant's arguments filed 2 April 2007 have been fully considered but they are not persuasive. Applicant argues on pages 9 and 10 that the patent of Distefano et al. is a handbag and not a holster. While this is true, Distefano et al. is used to teach putting a

bottom and flap on the already present interior pocket of Clarke, as noted above. Regarding the holster bending along a hinge line at the bottom of the auxiliary case, as noted above Distefano et al. teach a zippered wall structure equivalent to Clarke. The holster wall hinges as the zipper is opened. Since the pockets of Distefano et al. are above the terminal point of the zipper, the auxiliary case bottom of Clarke as modified by Distefano et al. would hinge at the bottom of the auxiliary case because modifying Clarke to make the bottom of the auxiliary case above the ends of the zipper as taught by Distefano et al. to provide an auxiliary case that does not extend to the bottom of the holster would allow the holster to hinge at the bottom of the auxiliary case.

Conclusion

5. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. DeSantis et al. (US 6,966,320).

6. Applicant is duly reminded that a complete response must satisfy the requirements of 37 C.F. R. 1.111, including: "The reply must present arguments pointing out the specific distinctions believed to render the claims, including any newly presented claims, patentable over any applied references. A general allegation that the claims "define a patentable invention" without specifically pointing out how the language of the claims patentably distinguishes them from the references does not comply with the requirements of this section. Moreover, "The prompt development of a clear Issue requires that the replies of the applicant meet the objections to and rejections of the

Art Unit: 3782

claims." Applicant should also specifically point out the support for any amendments made to the disclosure. See MPEP 2163.06 II(A), MPEP 2163.06 and MPEP 714.02. The "disclosure" includes the claims, the specification and the drawings.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jack H. Morgan whose telephone number is 571-272-3385. The examiner can normally be reached on M-Th 8-6.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nathan Newhouse can be reached on 571-272-4544. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


NATHAN J. NEWHOUSE
SUPERVISORY PATENT EXAMINER

Jack H Morgan
Examiner
Art Unit 3782